

No. 00-1205

[illegible]

sued as Sgt. Keith); Arkansas
Department of Correction, Pine Bluff,
Arkansas; Steve Outlaw, Assistant
Warden, Maximum Security Unit,
Arkansas Department of Correction,
(originally sued as S. Outlaw),

Appellees.

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Submitted: October 7, 2000
Filed: November 8, 2000

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD, Circuit
Judges.

PER CURIAM.

Arkansas inmate Donnie Lair appeals the District Court's dismissal of his civil rights action against various prison officials. We reverse and remand.

Lair filed this action under 42 U.S.C. §§ 1981 and 1983 alleging that the defendants failed to protect him from an attack by another inmate, and failed to properly train and supervise staff. An evidentiary hearing was held but not transcribed, after which the magistrate judge recommended dismissal. The District Court, stating it had carefully reviewed the magistrate judge's recommendations and Lair's timely objections, adopted the magistrate judge's report in its entirety and dismissed the complaint. Because we find this review to be insufficient, we do not address the merits of the District Court's decision. As we noted in Jones v. Pillow, 47 F.3d 251, 252-53 (8th Cir. 1995), once a proper objection is made to the magistrate judge's findings, the District Court must conduct de novo review, which must, at a minimum, include listening to the tape recording or reading the transcript of the evidentiary hearing. The

presumption that de novo review was performed is negated where – as here – the transcript was not available, and the District Court’s order indicated only that it had reviewed the magistrate judge’s findings and recommendations and the plaintiff’s objections without any mention of a review of the evidentiary-hearing tapes.

Accordingly, we reverse and remand so that the District Court may conduct the required de novo review. See Fed. R. Civ. P. 72(b).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.